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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

XZAYVIA SAMOAN PETERSON,

Defendant and Appellant.

F077135

(Super. Ct. Nos. BF165609A,
BF163967A, BF166408A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Charles R. Brehmer, Judge.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Lewis A. Martinez and Louis M. Vasquez, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Meehan, J. and Snauffer, J.

Appellant Xzayvia Samoan Peterson pled no contest in case No. BF163967A to infliction of corporal injury on a cohabitant (Pen. Code, § 273.5),¹ in case No. BF165609A to assault with a deadly weapon other than a firearm (§ 245, subd. (a)(1)), and in case No. BF166408A, to assault by means of force likely to cause great bodily injury (§ 245, subd. (a)(4); count 1) and she admitted an on-bail enhancement (§ 12022.1) in this last case.

On March 6, 2018, pursuant to a plea agreement involving the three cases, the court sentenced her to an aggregate prison term of six years, the middle term of three years on her assault conviction in case No. BF165609A, and an on-bail enhancement in that case; a consecutive one year (one-third the middle term of three years) on her domestic violence conviction in case No. BF163967A; and a concurrent middle term of two years on her assault conviction in case No. BF166408A.

On appeal, Peterson contends the trial court improperly ordered victim restitution pursuant to section 1202.4, subdivision (f) in an amount to be determined by the probation department. We affirm.

DISCUSSION²

The court ordered Peterson to pay victim restitution in each of the three cases “in an amount to be determined by the Probation Department at the direction of the court[.]” Peterson contends this was an improper delegation of authority to the probation department. She asserts that section 1202.4, subdivision (f) requires the trial court to impose restitution. We disagree.³

¹ All further statutory references are to the Penal Code.

² The facts of the underlying offenses are omitted because they are not germane to the issues Peterson raises.

³ We assume, without deciding, that Peterson did not forfeit her challenge by her failure to object.

Section 1202.4, subdivision (f) provides, in relevant part:

“[I]n every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. *If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court.*” (Italics added.)

Peterson contends the probation department is not equipped for the fact-finding hearings often required to determine restitution amounts, and she argues that the delegation of authority deprived her of her “right to confront the prosecution evidence and present [her] own evidence.”

Peterson acknowledges that the court in *People v. Lunsford* (1998) 67 Cal.App.4th 901 (*Lunsford*) rejected this argument. There, the trial court ordered the defendant to pay restitution “ ‘in an amount to be determined by the Office of Revenue Reimbursement.’ ” (*Id.* at p. 903.) The Court of Appeal concluded the court’s order “complies with [section 1202.4, subdivision (f)] in that it ‘directs’ the Office of Revenue Reimbursement to ‘determine’ the amount of victim restitution because the proper amount could not be ascertained at the time of sentencing.” (*Lunsford, supra*, at p. 903.) The court noted, “If [the] defendant is dissatisfied with the agency’s determination, he may obtain judicial review in accordance with ... section 1202.4, subdivision (f)(1), which provides: ‘The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.’ ” (*Lunsford, supra*, at p. 904.)

Peterson contends *Lunsford* “reached the wrong conclusion.” In our view, however, the court’s reasoning and its conclusion that a trial court may, under section 1202.4, subdivision (f), direct an agency other than the trial court to determine the amount of restitution, were correct.

Peterson also relies on *People v. Bernal* (2002) 101 Cal.App.4th 155 (*Bernal*). In that case, the defendant was placed on felony probation and ordered to make restitution to the victim. After the defendant’s insurer made a payment to the victim and she executed a release, the defendant sought an order determining that his restitution obligation had been satisfied. The trial court issued such an order, and the People appealed. The Court of Appeal reversed and remanded the matter to the trial court to determine the defendant’s remaining restitution obligation. The appellate court reasoned that the objectives of restitution included not only indemnifying the victim, but also rehabilitating the defendant and deterring the defendant and others, and that while the victim’s act of executing the release “may [have] reflect[ed] [her] willingness to accept the amount paid in full satisfaction for all civil liability, it [did] not reflect the willingness of the People to accept that sum in satisfaction of the defendant’s rehabilitative and deterrent debt to society.” (*Id.* at pp. 161-162.) Remand was necessary because the trial court, having mistakenly concluded that the victim’s settlement release precluded an increase of the restitution award, had “failed to exercise its discretion, as it must do.” (*Id.* at p. 164.)

Peterson relies specifically on the first sentence of the following statement in *Bernal*: “Although the trial court could properly refer the restitution determination to the probation department, the parties were entitled to a court review of that department’s determination, in accordance with section 1202.4, subdivision (f)(1). *As a result of the trial court’s erroneous belief that the settlement release barred further restitution as a matter of law, the parties did not receive such a hearing.*” (*Bernal*, *supra*, 101 Cal.App.4th at p. 164, fn. omitted, italics added.) Peterson’s argument, however, ignores the second sentence. Here, the court was not under an erroneous belief that precluded

defendant from having a hearing on the amount of restitution. As indicated above, if Peterson is dissatisfied with the probation department's determination of the amount of restitution due, she is entitled to a hearing under section 1202.4, subdivision (f)(1).

Bernal is thus distinguishable and does not support Peterson's position.

Peterson also argues she was denied her due process rights under the United States Constitution because "[t]he trial court could not exercise its discretion regarding the proper amount of restitution," and because Peterson was "denied the opportunity to be heard regarding the amount of victim restitution...." Again, we disagree. "Due process is satisfied if [the] appellant is given notice of the amount sought and a hearing to contest that amount." (*People v. Thygesen* (1999) 69 Cal.App.4th 988, 993.) There is nothing in the record to suggest that Peterson has not been given the required notice or that she has been denied her right to a hearing. Indeed, there is no indication the probation department has yet made a determination of the amount of restitution. Thus, the record does not support the claim of a due process violation.

DISPOSITION

The judgment is affirmed.